

1 A. That looks like my writing.

2 ATTORNEY EDNEY:

3 The whole page, or just  
4 part?

5 A. Just at the bottom, beginning  
6 with 'Mo Better Blues, I guess.

7 BY ATTORNEY KRAKOFF:

8 Q. Is that the same thing with  
9 the previous, the April of '93? Was  
10 that beginning with Runaway Train?  
11 Is that your handwriting?

12 A. It looks like it.

13 Q. And what about at the top,  
14 beginning with Digstown down to ---?

15 A. I cannot say for sure.

16 Q. In any event, some of the  
17 entries are yours. I suppose, as you  
18 look through this, most of them are  
19 somebody else's; is that correct?

20 A. Most of them, yes, that's  
21 correct.

22 Q. Okay. And is there any way  
23 that I could determine at this  
24 juncture, as we look through this  
25 catalogue exhibited in Number Ten,

1     whether the version of a particular  
2     movie might have been both R-rated  
3     and non R-rated, something less than  
4     R-rated? Is there any way that I  
5     would be able to determine, from any  
6     of the recreation department's  
7     records, whether it was the R-rated  
8     version or PG-13 or some lesser  
9     version than an R-rated movie?

10    A.       No.

11    Q.       Do you have a recollection ---  
12     for example, if you look at February  
13     of '93, you'll see Taxi Driver on  
14     February 17. Do you know whether  
15     that was an R-rated version, or  
16     something else?

17    A.       I do not.

18    Q.       Prior to Zimmer, were R-rated  
19     movies --- and when I use the term  
20     R-rated movies, I mean movies that  
21     were still R-rated and hadn't been  
22     diluted to something less than  
23     R-rated. Were R-rated movies shown  
24     at FCI-McKean as part of the inmate  
25     viewing program?

1 A. Yes.

2 Q. And can you give me your ---  
3 can you give me a ballpark estimate  
4 of how many R-rated movies were shown  
5 during the time that you were the  
6 supervisor of the recreation  
7 department prior to Zimmer, during  
8 the period of a little bit in excess  
9 of four years? Are you talking about  
10 dozens? Are you talking about  
11 scores? Are you talking about  
12 hundreds? I'd like to get a sense of  
13 how many. And I'm not going to hold  
14 you to a specific figure, which I  
15 assume you don't have.

16 A. In five years?

17 Q. Yes. During the period of  
18 time from the time you became the  
19 supervisor --- and so that we have  
20 that, when was that again?

21 A. I believe it was '91.

22 Q. In approximately May of '91;  
23 correct?

24 A. I believe it was.

25 Q. You made it clear that you're

1 not sure of that. Zimmer would have  
2 come in January of '96. During that  
3 period of time, I'd like you to give  
4 me your best estimate of  
5 approximately how many R-rated movies  
6 were shown at FCI-McKean as part of  
7 the recreation program. And you can  
8 look through Exhibit Ten, if that  
9 helps to refresh your recollection at  
10 all. There's also Exhibit 22. I  
11 don't know whether anything in these  
12 documents would help you, beginning  
13 with Swank Motion Pictures, Inc. ---  
14 I'm sorry, those are --- that's a  
15 post. I think those are, if not  
16 exclusive, primarily, post-Zimmer.  
17 That won't help you.

18 A. I'd say 300 to 400 probably.

19 Q. Okay. Now, who, during the  
20 time --- and if it changed, let me  
21 know that. Who, during the time that  
22 you were supervisor of the recreation  
23 department, prior to Zimmer, had the  
24 responsibility for determining what  
25 movies were appropriate to show to

1 the inmates and what movies were  
2 inappropriate to show, under the  
3 OP/FCI-McKean policy?

4 A. I'm not sure what you mean as  
5 far as who determined the actual  
6 ruling.

7 Q. I meant at McKean --- let me  
8 begin with another question.

9 A. Okay.

10 Q. Did somebody at McKean,  
11 whoever that person was, or people  
12 were, have the discretion to say no,  
13 this isn't appropriate to show the  
14 inmates, I'm not going to show this  
15 movie to the prisoners?

16 A. Yes.

17 Q. And that applied to R-rated  
18 movies as well; correct?

19 A. That's correct.

20 Q. Now, was there a person or  
21 were there persons who had the  
22 responsibility and the authority to  
23 say no, we're not going to allow the  
24 inmates to see this R-rated movie, we  
25 don't think it's appropriate?

1 A. Yes.

2 Q. Was that one person or more  
3 than one person who had that  
4 authority?

5 A. There was a recreation  
6 specialist who gathered information,  
7 which he would present it to the  
8 supervisor, my supervisor.

9 Q. And who is your supervisor?

10 A. It depends which year you're  
11 talking about.

12 Q. No. I mean what position.

13 A. Supervisor of Education up to  
14 Superintendent of Industries or  
15 Associate Warden of Operations and  
16 Programs.

17 Q. It could go all the way up  
18 just below the Warden; is that  
19 correct?

20 A. It could.

21 Q. Were there occasions when it  
22 did go all the way up to an Associate  
23 Warden during the time period that  
24 we're talking about?

25 A. I believe so.

1 Q. If a specialist came to you  
2 and said, I have questions about this  
3 movie, do you think we should  
4 show --- and I'm talking about R-  
5 rated movies --- should we show this  
6 R-rated movie, and you looked at it  
7 and you decided no, I don't think  
8 it's appropriate, would it go any  
9 higher than you? Did you have to  
10 pass it on to the person in charge of  
11 the education department, the  
12 supervisor of the education  
13 department, or could you make that  
14 decision if you said no?

15 A. I would provide guidance.

16 Q. And then if it went --- you'd  
17 provide guidance to the Supervisor of  
18 Education if the Supervisor of  
19 Education said no, I don't think this  
20 should be shown. Did it end there,  
21 or would it have to go above ---?

22 A. It could end there.

23 Q. But if the supervisor had some  
24 questions about the propriety and  
25 wasn't sure either way, he could then

1 take it to his supervisor; is that  
2 fair?

3 A. Correct.

4 Q. Okay. Were there occasions  
5 that you took it to the supervisor  
6 and said, in effect, do you think  
7 this is an appropriate R-rated movie  
8 to show to the prisoners?

9 A. I believe there was.

10 Q. Okay. Do you have a sense of  
11 how many times you did that during  
12 this time period? Did you do it a  
13 couple times? Did you do it a dozen  
14 times? Did you do it 100 times, 50  
15 times?

16 A. I believe it was less than  
17 half a dozen times.

18 Q. Okay. Now, I believe your  
19 testimony was that --- and correct me  
20 if I'm wrong, I believe you said that  
21 you estimated, and we recognize it's  
22 an estimate, that between 200 and 300  
23 R-rated movies were shown during the  
24 time that you were the supervisor  
25 prior to Zimmer's enactment; is that

1 correct?

2 A. Correct.

3 Q. Now, during that period of  
4 time, do you have a sense of how many  
5 movies were not permitted to be shown  
6 to inmates, whether you made the  
7 decision or the head of the education  
8 department made the decision or  
9 somebody above the head made the  
10 decision?

11 A. I don't recall that.

12 Q. What criteria, if there was  
13 any, or what standard would you use  
14 when one of your subordinates came to  
15 you and said, do you think this  
16 R-rated movie is appropriate to show  
17 to the inmates? Did you have a  
18 standard, something that you weighed,  
19 something you looked at?

20 A. A lot of times it was based on  
21 prison escapes, violence towards law  
22 enforcement officers, anything that  
23 could incite inmates at the housing  
24 unit.

25 Q. So you looked at, is this

1 something that could affect the  
2 security of the institution, in a  
3 broad sense?

4 A. Correct.

5 Q. Okay. Did you look at issues  
6 of nudity at all prior to Zimmer?  
7 Was that a factor that you used? And  
8 by nudity, I'm referring to explicit  
9 nudity, where the breasts were shown  
10 or the genitalia were shown or the  
11 buttocks were naked, things of that  
12 sort. Was that a factor that you  
13 looked at prior to Zimmer?

14 A. Yes. Rape scenes, I believe,  
15 were not permitted.

16 Q. What about nudity without rape  
17 scenes? What about scenes where it  
18 was a consensual lovemaking, quote,  
19 between adults and ---?

20 A. That was permitted.

21 Q. Okay. That wasn't something  
22 prior to Zimmer that would have  
23 concerned you to the point that you  
24 wouldn't allow the movie; is that  
25 correct?

1 A. That's correct.

2 Q. Okay. Now, what about  
3 explicit language, graphic language,  
4 where people were using extreme  
5 profanities, that sort of thing? Is  
6 that a factor that you utilized in  
7 considering whether a movie would or  
8 would not be permitted to be shown  
9 prior to Zimmer?

10 A. As far as I can recall, only  
11 when --- movies with racial slurs,  
12 degrading the other racial groups,  
13 were not shown.

14 Q. Okay. Now, did you watch ---  
15 to what extent, if any, did you  
16 actually see the movies that were  
17 shown to the inmates?

18 A. I watched a number of them.

19 Q. Did a number of those contain  
20 graphic language of a non-racial  
21 nature?

22 A. Yes.

23 Q. Did the language that you  
24 heard in those films --- and again,  
25 I'm talking about R-rated films; you

1 understand that?

2 A. Yes.

3 Q. Did that language vary to any  
4 extent from the kinds of language  
5 that you hear in the institution, you  
6 hear inmates using in the  
7 institution?

8 A. No.

9 Q. Now, during the time that you  
10 were supervisor of the recreation  
11 department, did FCI-McKean house any  
12 people who were convicted sex  
13 offenders?

14 A. I don't have the statistics on  
15 that.

16 Q. Do you know whether sex  
17 offenders were housed in this  
18 institution?

19 A. They have been housed here in  
20 the past, yes.

21 Q. Okay. And do you feel fairly  
22 comfortable that there at least were  
23 a few sexual offenders housed in the  
24 institution throughout the period  
25 that you were supervisor of the

1 recreation department?

2 A. Yes.

3 Q. Now, during that time period,  
4 were there films that contained  
5 graphic sexual scenes? And by that  
6 I'm not talking about copulation, I'm  
7 talking about two naked bodies lying  
8 there and maybe mimicking sex, but  
9 nothing like you'd see in an X-rated  
10 movie.

11 ATTORNEY EDNEY:

12 Asked and answered.

13 Didn't you ask him this  
14 already?

15 ATTORNEY KRAKOFF:

16 I think he said ---.

17 BY ATTORNEY KRAKOFF:

18 Q. You said that there were;  
19 right?

20 A. Yes.

21 Q. Did you or did anybody in the  
22 recreation department, to your  
23 knowledge, ever exclude sex offenders  
24 from watching films of that nature?

25 A. No.

1 Q. To your knowledge, did the  
2 administration ever tell you or ask  
3 you to exclude sex offenders from  
4 watching movies that contained  
5 graphic sexual scenes?

6 A. No.

7 Q. During the time that you were  
8 supervisor of the recreation  
9 department, did FCI-McKean house  
10 people who were convicted of violent  
11 crimes?

12 A. Yes.

13 Q. I take it that --- and I think  
14 you testified before --- some of the  
15 R-rated movies that were shown to the  
16 inmate population had scenes in them  
17 where there was graphic violence; is  
18 that correct?

19 A. Violence. I'm not sure what  
20 you mean by graphic, but there's  
21 violence.

22 Q. People thrusting knives into  
23 other people?

24 A. Yes.

25 Q. And I noted that Wise Guys had

1     been shown at one time, that scene  
2     where a gun was taken to the back of  
3     a driver's head and he was shot.  
4     That was shown, wasn't it?

5     A.         I'd have to check the records.

6     Q.         Do you have a recollection of  
7     Wise Guys being shown?

8     A.         No, I do not.

9     Q.         Okay. Let me put it this way.  
10    Were there movies where guns were put  
11    to another person's head and a shot  
12    was fired and the person was shot in  
13    the head?

14    A.         I don't recall any specific  
15    movies like that, but with an R-rated  
16    movie, there's a good chance.

17    Q.         Sorry?

18    A.         With an R-rated movie, there's  
19    violence in them.

20    Q.         Okay. Pretty substantial  
21    violence?

22                     ATTORNEY EDNEY:

23                     Asked and answered.

24                     We're getting argumentative.

25                     Let's move on.

1 ATTORNEY KRAKOFF:

2 Okay.

3 BY ATTORNEY EDNEY:

4 Q. Were there any instructions or  
5 directions given to you from up  
6 above, all the way up to the Warden,  
7 down to the supervisor of the  
8 education department, that inmates  
9 who were in the prison for violent  
10 crimes should not see R-rated movies  
11 that contained serious violence in  
12 them?

13 A. No.

14 ATTORNEY KRAKOFF:

15 I have to take a break.

16 ATTORNEY EDNEY:

17 Okay.

18 SHORT BREAK TAKEN

19 BY ATTORNEY KRAKOFF:

20 Q. If I can refer you back to  
21 Plaintiffs' Exhibit Two.

22 (Plaintiffs' Exhibit  
23 Two marked for  
24 identification.)

25 BY ATTORNEY KRAKOFF:

1 Q. If I can refer you to the 9th  
2 Interrogatory on page 3. This asks  
3 the name and address of the company  
4 which  
5 FCI-McKean currently leases movie  
6 cassettes for the showing of films to  
7 McKean inmates. And that question  
8 was put to the Defendants in 1999.  
9 Movie World, they're still currently  
10 ordering from Movie World in  
11 Bradford?

12 A. Yes.

13 Q. What about Swank Motion  
14 Pictures that's listed here? Do you  
15 know whether the recreation  
16 department still orders films from  
17 Swank Motion Pictures?

18 A. They do.

19 Q. Had you dealt with Swank  
20 Motion Pictures in conjunction with  
21 the inmate film program at any point  
22 prior to Zimmer, or is that something  
23 that occurred after Zimmer?

24 A. I believe we dealt with Swank  
25 through a licensing agreement to show

1 movies. I don't recall the exact  
2 dates, but I believe Films,  
3 Incorporated and Swank were both  
4 utilized as licensed agreements to  
5 show movies.

6 Q. Now, with Movie World being  
7 here, and at one point there was  
8 another relatively local outlet that  
9 you testified about in --- I forget  
10 the name of the small town. Kane.  
11 What was the reason for dealing with  
12 Swank? Did Swank have something that  
13 they could offer that wasn't  
14 available at the local outlets?

15 A. I believe Swank and Films,  
16 Incorporated are both licensing  
17 agreement vendors, and certain movies  
18 --- Films, Incorporated --- were not  
19 available through them. So Swank was  
20 also used as a licensing vendor.

21 Q. What does the licensing vendor  
22 mean exactly? What was the practical  
23 import of that?

24 A. You have to buy the rights of  
25 the production studio to show a

1 movie ---

2 Q. Okay.

3 A. --- to a large group. You  
4 just can't rent a movie. You have to  
5 buy the rights to it.

6 Q. And so you used Swank and then  
7 --- was it Movies, Unlimited or  
8 Films, Incorporated?

9 A. Films, Incorporated.

10 Q. The prison had to deal with  
11 them even to be able to order films  
12 locally; is that correct?

13 A. Yes.

14 Q. And that still is the case?

15 A. That's correct.

16 Q. Why don't you tell me how  
17 films are actually shown, the  
18 process? My understanding is that  
19 they're shown in common areas over TV  
20 sets, but I want you to tell me,  
21 pre-Zimmer first, what was the --- in  
22 a physical sense, how were films show  
23 to inmates?

24 A. Once we receive the movie?

25 Q. Yes.

1 A. We have a video cassette  
2 player that's in the recreation  
3 department. The movie is inserted  
4 into the VCR. And then we have  
5 television sets throughout the units  
6 throughout the institution.

7 Q. That are linked up to the VCR?

8 A. Yes. And they're shown that  
9 way. And that remains --- that's how  
10 they're shown to this day.

11 Q. That's how they've always been  
12 shown?

13 A. That's the way they've always  
14 been shown, yes.

15 Q. And you say throughout the  
16 institution. Does that mean only in  
17 the housing units, or in other places  
18 as well?

19 A. The inmates at the housing  
20 units, yes.

21 Q. Are the housing units in this  
22 institution referred to as pods?

23 A. No.

24 Q. How are they referred to?

25 A. Housing units.

1 Q. Just housing units?

2 A. Yes.

3 Q. Okay. And the TV will be in  
4 kind of a common area?

5 A. Correct.

6 Q. And the inmates would be  
7 outside of their cells, I take it,  
8 sitting what, at benches?

9 A. Chairs.

10 Q. Chairs. Okay. And at  
11 FCI-McKean, are inmates currently  
12 permitted to have television sets in  
13 their cells?

14 A. No.

15 Q. Has that always been the case?

16 A. Yes.

17 Q. And the television sets that  
18 the films are shown over, are those  
19 sets also utilized to allow inmates  
20 in the housing units to watch  
21 television programs?

22 A. Yes. There's televisions that  
23 are designated for sports versus  
24 movies. There's Spanish televisions  
25 where movies are shown. Those

1 televisions are dedicated for movies  
2 only.

3 Q. I understand that. But on  
4 days that they're not shown, can  
5 inmates see movies over the  
6 television?

7 A. A regular network program?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. Are they allowed to  
11 watch movies on HBO or any of the  
12 other cable outlets?

13 A. No.

14 Q. And are there any particular  
15 hours and days of the week that  
16 inmates are allowed to watch regular  
17 television programming?

18 A. I believe the televisions are  
19 turned on at 7:30, 8:00, and they're  
20 turned off around 10:00 at night.

21 Q. And is it some sort of a unit  
22 direction or somebody who's in charge  
23 of the unit who decides what's going  
24 to be watched in that unit at a given  
25 time?

1 A. I believe it has to be  
2 approved by a manager. But the  
3 televisions are all clearly marked,  
4 you know, sports, TV, music TV, movie  
5 television.

6 Q. So is there more than one  
7 television in each unit?

8 A. Yes.

9 Q. Okay. So for those inmates  
10 who want to watch movies, they go and  
11 look at a particular television set;  
12 is that correct?

13 A. That's correct.

14 Q. Okay. And they can do that  
15 whenever they're not working or  
16 otherwise not in school or not  
17 otherwise occupied; is that correct?

18 A. That's correct.

19 Q. And the movies that they see  
20 are the ones that have been modified  
21 in order to --- strike that.

22 The movies that they see which  
23 had at one time been R-rated have  
24 been modified so they could be shown  
25 over the general networks; is that

1 correct?

2 A. You're talking about the  
3 movies that the recreation department  
4 shows?

5 Q. No. I'm talking about the  
6 ones that inmates can see on the unit  
7 when they want to watch CBS or NBC or  
8 ABC.

9 A. That's correct, yes.

10 Q. Okay. Now, you mentioned a  
11 Spanish language television network  
12 that is available to inmates here.

13 A. Yes.

14 Q. Prior to Zimmer, did you have  
15 Hispanic prisoners in the  
16 institution?

17 A. Yes.

18 Q. And were there ever any  
19 occasions when you leased or rented  
20 Spanish-language movies to show  
21 prisoners?

22 A. I don't recall.

23 Q. What about currently? By  
24 currently --- let me define that.  
25 Subsequent to Zimmer and before you

1 became head of the education  
2 department, do you have any  
3 recollection of any Spanish-language  
4 movies being shown?

5 A. No.

6 Q. What about other --- once  
7 again, post-Zimmer, do you have a  
8 recollection of any other  
9 foreign-language films, non-Spanish  
10 I'm talking about, being shown as  
11 part of the program?

12 A. No.

13 Q. Are there any categories of  
14 inmates, such as inmates in  
15 segregation status, who are not  
16 permitted to watch --- while they're  
17 in that status, to watch movies as  
18 part of the recreation program?

19 A. Yes, segregation inmates.

20 Q. Does that include  
21 administrative custody as well as  
22 disciplinary custody?

23 A. Yes.

24 Q. Are there any other categories  
25 of prisoners who are not permitted to

1 see movies in the institution?

2 A. No.

3 Q. At the time of Zimmer, just  
4 prior to Zimmer, pre-Zimmer --- let  
5 me refer you to item 6 of Plaintiffs'  
6 Exhibit Two. I'm going to read the  
7 question to you and then you can  
8 confirm whether, if you know, that's  
9 accurate, and ask about current  
10 funding. The question was, quote,  
11 identify the funding source of the  
12 movies that are used to lease  
13 videocassettes for showing in the  
14 inmate film program. Example,  
15 Inmates Benefit Fund, et cetera.  
16 That was in parenthesis. And  
17 describe, with specificity, how the  
18 monies are generated, parenthesis,  
19 i.e., commissary purchased by  
20 inmates, purchases from vending  
21 machines in the inmate visiting area,  
22 et cetera, closed parent. Your  
23 response was the Inmate Trust Fund,  
24 which is funded through revenue from  
25 commissary vending and inmate

1 telephone services. As of 1999, was  
2 that accurate?

3 A. Which paragraph are you  
4 reading?

5 Q. I'm sorry, paragraph 6. Why  
6 don't you read that to yourself.

7 A. What exhibit was that again?

8 Q. Exhibit Two. It's the  
9 Interrogatories, coupled with the  
10 Request for Production of Documents.  
11 It's on page 3, at the top of page 3.  
12 Do you see it?

13 A. Yes.

14 Q. Okay. Why don't you read that  
15 to yourself. And I just read it out  
16 loud. I won't repeat it. And tell  
17 me whether that was accurate as of  
18 1999.

19 A. That's correct.

20 Q. Has that changed since 1999?

21 A. I do not know.

22 Q. Had that changed prior to the  
23 time you became supervisor of the  
24 education department?

25 A. I don't believe so.

1 Q. I take it that as supervisor  
2 of the education department, you  
3 don't have too much involvement with  
4 the movie program at this point; is  
5 that correct?

6 A. That's correct.

7 Q. Referring you to Plaintiffs'  
8 Exhibit 23. I think this is the one  
9 that might not be --- you might not  
10 have the first page of --- which is a  
11 --- I'll represent to you that this  
12 is a printout that was obtained in  
13 July of 1998 Plaintiffs' Counsel,  
14 from Blockbuster Video on Baum  
15 Boulevard in Pittsburgh. And this is  
16 an inventory status report reflecting  
17 titles and ratings of movies that  
18 were available from that outlet. Did  
19 you have anything similar to this  
20 from Movie World or from the Kane  
21 outlet that you didn't recall the  
22 name of?

23 A. No.

24 ATTORNEY KRAKOFF:

25 I don't have any other

1 questions.

2 SHORT BREAK TAKEN

3 ATTORNEY EDNEY:

4 I just have one  
5 question for Redirect.

6 EXAMINATION

7 BY ATTORNEY EDNEY:

8 Q. Mr. Flatt, you indicated  
9 earlier in response to a question by  
10 Mr. Krakoff that the institution  
11 didn't exclude certain categories of  
12 prisoners such as sex offenders or  
13 violent prisoners from watching  
14 movies. Can you explain why that  
15 wasn't the practice, to exclude those  
16 specific individuals?

17 A. If you start excluding  
18 inmates, it's like segregation where  
19 the inmates are not allowed to see  
20 the TV, other inmates would know why  
21 we took them out of there. And their  
22 security would --- it would basically  
23 be affecting their personal safety  
24 and security.

25 Q. Are there other reasons?

1 A. As far as locating them now  
2 exactly being specific what sex  
3 crimes, you know, did they commit,  
4 how many --- where would we put that  
5 many. But the main reason was their  
6 personal safety.

7 ATTORNEY EDNEY:

8 Thank you very much. I  
9 have nothing else.

10 ATTORNEY KRAKOFF:

11 I have nothing else. I  
12 appreciate it.

13 A. Okay.

14 ATTORNEY KRAKOFF:

15 Thank you.

16 A. Thank you.

17 ATTORNEY EDNEY:

18 He wants to read and  
19 then sign.

20 \* \* \* \* \*

21 DEPOSITION CONCLUDED AT 9:58 A.M.

22 \* \* \* \* \*

23

24

25